

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MICHAEL A. JACKSON, SR.,)
)
 Plaintiff,)
)
 vs.)
)
)
 DENISE HENDERSON, Individually;)
 DERREL DENTON, Juvenile Probation)
 OFFICER, Individually and Officially,)
 DEPARTMENT OF CHILDREN)
 SERVICES STATE OF TENNESSEE;)
 JUVENILE COURT JUDGE WAYNE)
 SHELTON, Officially; and)
 MONTGOMERY COUNTY,)
 TENNESSEE,)
)
 Defendants.)

**CASE NO. 3:05-0677
JUDGE ECHOLS/KNOWLES**

REPORT AND RECOMMENDATION

This matter is before the Court upon Plaintiff's "Motion to Dismiss the Department of Children Services State of Tennessee As a Party To His Complaint." Docket No. 17. The Department of Children Services has not filed a Response to the Motion. The "State of Tennessee, Department of Children's Services" did, however, file a "Motion to Dismiss the Complaint" (Docket No. 14), which was filed twelve (12) days before Plaintiff's Motion.

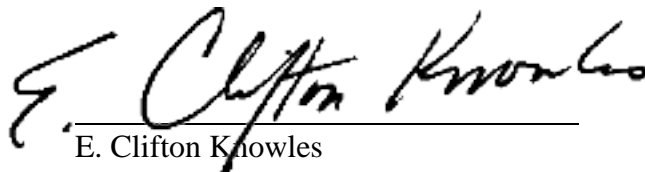
Fed. R. Civ. P. 41(a) provides in pertinent part "subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the Plaintiff without order of Court (I) by filing a Notice of Dismissal at any time before service by the adverse party of an answer or of a Motion for Summary Judgment, whichever first occurs. . . ."

Defendant State of Tennessee did not file an Answer or a Motion for Summary Judgment

prior to the filing of Plaintiff's "Motion to Dismiss." The State's "Motion to Dismiss the Complaint" is not a Motion for Summary Judgment for purposes of Rule 41(a)(1). *See Aamot v. Kassel*, 1 F.3d 441, 443 (6th Cir. 1993).

For the foregoing reasons, the undersigned recommends that Plaintiff's "Motion to Dismiss the Department of Children Services State of Tennessee As a Party To His Complaint" be treated as a Notice of Voluntary Dismissal filed by Plaintiff pursuant to Fed. R. Civ. P. 41(a)(1), and that Plaintiff's claims against the State of Tennessee Department of Children Services be DISMISSED.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in this Report in which to file any response to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986).



E. Clifton Knowles
United States Magistrate Judge